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In re Application of	:	
LUITHLE, et al.	:	
U.S. Application No.: 10/516,777	:	DECISION ON PETITION
PCT No.: PCT/EP03/05735	:	
Int. Filing Date: 02 June 2003	:	UNDER 37 CFR 1.137(b)
Priority Date: 10 June 2002	:	
Attorney Docket No.: Le A 36 131	:	
For: 2-HETEROARYL CARBOXAMIDES	:	

This decision is in response to applicant's "Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 13 January 2006.

### **BACKGROUND**

On 02 June 2003, applicant filed international application PCT/EP03/05735, which claimed priority of an earlier application filed 10 June 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 10 December 2004.

On 02 December 2004, applicant filed a transmittal letter for entering the U.S. national stage under 35 U.S.C. 371 accompanied by payment of the U.S. basic national fee; an English translation of the international application; an Information Disclosure Statement; a preliminary amendment and an Application Data Sheet.

On 18 May 2005, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was also instructed to provide payment of the \$130.00 surcharge for providing an executed oath or declaration of the inventors later than thirty months from the priority date and \$1260 in additional claim fees or cancel the additional claims for which fees are due. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 13 January 2006, applicant filed the present petition to revive pursuant to 37 CFR 1.137(b) accompanied by an executed combined declaration and power of attorney.

### DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant has satisfied items (2) and (3), item (4) does not apply.

As to item (1), applicant has currently provided an executed declaration of the inventors and paid the appropriate surcharge. Regarding the additional claim fees of \$1260 identified on the Form PCT/DO/EO/905, applicant claims that no additional claim fees are due based on the preliminary amendment filed 02 December 2004. Applicant is advised that the \$1260 in claim fees was calculated after consideration of the preliminary amendment filed 02 December 2004. Specifically, claims 2-11 are dependent to claim 1; claim 15 is dependent to claims 1-11; claim 16 is dependent to claim 1 and/or claim 15; claim 17 is dependent to claim 1 and claim 18 is dependent to claim 15. This results in a total number of claims of 38. Therefore, as authorized, and to complete the proper reply to the Form PCT/DO/EO/905, the \$1260 in claim fees will be charged to deposit account number 13-3372.

Applicant has satisfied all four items and it is therefore proper to grant applicant's petition at this time.

### CONCLUSION

Applicant's petition under 37 CFR 1.137(b) is **GRANTED**.

The application has an international filing date of 02 June 2003 under 35 U.S.C. 363 and will be given a date of **13 January 2006** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.



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